

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON L. DAVIS,

Defendant-Appellant.

UNPUBLISHED

May 27, 2003

No. 238205

Wayne Circuit Court

LC No. 01-002707-01

Before: Murray, P.J., and Neff and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of delivery of less than fifty grams of heroin, MCL 333.7401(2)(a)(iv), and delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv). Defendant was sentenced to concurrent terms of ninety days in jail for each offense, an additional ninety days on a tether, and to lifetime probation for each offense.¹ We affirm.

Defendant first claims that the prosecution failed to present sufficient evidence to support his delivery convictions. We disagree. When reviewing a claim of insufficient evidence, this Court must view the evidence in a light most favorable to the prosecution in order to determine whether a rational trier of fact could have found that the essential elements of a crime were proven beyond a reasonable doubt. *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998). Circumstantial evidence and reasonable inferences may be utilized to satisfy and establish the elements of the crime. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001).

The elements of delivery of less than fifty grams of heroin and/or cocaine are: (1) the defendant delivered a controlled substance; and (2) the controlled substance was in an amount

¹ Defendant was also convicted of possession of marijuana, MCL 333.7403(2)(d), and was sentenced to ninety days in jail and six months' probation. However, defendant is not appealing that conviction.

less than fifty grams. *Id.* at 703. “Delivery” is defined as “the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there was an agency relationship.” *Id.*, citing MCL 333.7105(1). The transfer of the controlled substance distinguishes the crime of delivery from possession. *Schultz, supra* at 703.

We conclude that the evidence was sufficient to support defendant’s convictions. First, testimony regarding the lab analysis of the controlled substances recovered was introduced at trial. The weight of the controlled substance totaled .14 grams of cocaine and .09 grams of heroin. Therefore, there was sufficient evidence that the substances retrieved from the scene were controlled substances weighing less than fifty grams.

Second, there is sufficient evidence that defendant delivered the controlled substances. To satisfy the delivery element, the prosecution must show that defendant transferred the controlled substances. *Id.* at 703. Officer Ahmed Haidar testified that he observed defendant reach into the awning of the porch and pull out a baggy of suspected narcotics. He then observed defendant hand items from the baggy to Ronald Allah Haisha in exchange for currency. The officers arrested Haisha as he was walking away from the vacant house and confiscated a baggy of cocaine and five packs of heroin from his person. The officers then observed defendant step back into the house holding in his hand the baggy he retrieved from the porch awning. Officer Michael Davis also observed defendant discard the plastic baggy in the house and it was later retrieved and lab analysis confirmed that the baggy contained cocaine, marijuana and tablets of ecstasy. Furthermore, defendant was later arrested and \$1,073 was confiscated from his person. Based on this evidence, a rational trier of fact could reasonably infer that defendant handed cocaine and heroin to Haisha, and therefore, transferred the substances to him.

Defendant next claims that the trial court failed to make specific findings of fact or set forth conclusions of law as required by MCR 6.403 and MCR 2.517. Although this issue is not properly presented for appellate review because it was not identified in the statement of questions presented as required pursuant to MCR 7.212(C)(5), *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000), we will address defendant’s argument as it was briefed by both parties. We conclude that the trial court’s findings were adequate for appellate review.

A trial court’s factual findings are sufficient for appellate review so long as it appears that the court was aware of the issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). The trial court record reflects that the trial judge consistently asked questions throughout the trial and was fully aware of the issues in the case. The court revealed its knowledge and understanding of the issues through extensive questioning of the witnesses. In addition, the court recognized the consistencies and inconsistencies in the testimony. Therefore, although the court’s findings of facts are brief, it is evident that the court was aware of the issues and correctly applied the law. *Id.* at 134.

Finally, defendant claims that the trial court’s factual findings were clearly erroneous. Defendant’s brief on appeal did not cite to or include any contested factual findings. Defendant’s brief discussed only the applicable standard of review governing this issue. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give cursory treatment with little or no citation of

supporting authority.” *People v Kelly*, 231 Mich App 627, 640-41; 588 NW2d 480 (1998). Therefore, we decline to address the issue.

Affirmed.

/s/ Christopher M. Murray

/s/ Janet T. Neff

/s/ Michael J. Talbot